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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

AMERICAN PENSION SERVICES, INC.,
and CURTIS L. DeYOUNG,

Defendants,

**MOTION TO INTERVENE BY KIM R.
WILSON AND MEMORANDUM IN
SUPPORT**

Case No. 2:14-cv-00309-RJS-DBP

Judge Robert J. Shelby
Magistrate Judge Dustin B. Read

[Filed Electronically]

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Kim R. Wilson, through his undersigned counsel, respectfully moves the Court for an order permitting him to intervene on behalf of himself and the Kim R. Wilson IRA as interested parties in this receivership proceeding.

This Motion is supported by the following memorandum of points and authorities:

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

1. On April 24, 2014, the SEC initiated this action against American Pension Services, Inc. and Curtis DeYoung (the “Defendants”) alleging that the Defendants engaged in securities fraud. On the same date, the Court appointed a receiver and gave her broad powers to gather, preserve, and manage the Defendant’s assets. See Order Appointing Receiver, Freezing Assets, and Other Relief, Docket No. 9. The Court appointed Diane A. Thompson (the “Receiver”) as receiver in this case.

2. Mr. Wilson and his deceased wife, Vicky S. Wilson, have maintained individual retirement accounts with American Pension Services, Inc. (“APS”) for over 25 years. The assets in the accounts have consisted solely of ownership of a single parcel of unimproved real property.

3. Upon the death of Vicky S. Wilson on December 29, 2010, Mr. Wilson succeeded to the interests of the Vicky S. Wilson IRA and such assets became part of the holdings of the Kim R. Wilson IRA.

4. At no time has APS held any funds which were or could have been the subject of any fraud by any defendant nor were they vulnerable to loss.

ARGUMENT

Federal Rule of Civil Procedure 24(a)(2) permits intervention as a matter of right to any movant who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede

the movant's ability to protect its interest, unless existing parties adequately represent that interest." The "Tenth Circuit generally follows a liberal view in allowing intervention under Rule 24(a)." *Elliot Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1031, 1103 (10th Cir. 2005). A party may intervene as a matter of right if (1) the application to intervene is timely made; (2) the movant claims an interest relating to the property or transaction which is the subject of the action; (3) the movant's interest may be impaired or impeded if the movant is not permitted to intervene; and (4) the movant's interest is not adequately represented by existing parties. *Id.* Mr. Wilson's unique situation satisfies all of these elements.

First, the application is timely made.

Second, Mr. Wilson is the owner of assets held in an APS account administered by APS and now the Receiver.

Third, to establish the impaired or impeded element of the intervention test, Mr. Wilson "must show only that the impairment of its [his] substantial legal interest is possible if intervention is denied." *See id.* at 1253. This element is easily satisfied in this case. The Receiver is failing to recognize the unique nature of assets held in the Kim R. Wilson IRA Account and seeks to lump them with dissimilar assets and accounts.

Finally, no party to this case adequately represents the interest of Mr. Wilson. The Receiver obviously is adverse to his interests.

CONCLUSION

Mr. Wilson respectfully requests this Court's leave to intervene and present his objection to the Receiver's Plan.

DATED this 20th day of October, 2014.

SNOW, CHRISTENSEN & MARTINEAU

/s/ Kim R. Wilson

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CERTIFICATE OF SERVICE

I certify that on this 20th day of October, 2014 copies of the foregoing **MOTION TO INTERVENE BY KIM R. WILSON AND MEMORANDUM IN SUPPORT**, which was filed electronically, were served upon all parties receiving notice via the Court's ECF System.

/s/ Kim R. Wilson